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April 29, 2004 Date	 Robert E. Hanson

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
J. Brian Windsor, *et al.*

Serial No.: 10/047,251

Filed: January 14, 2002

For: GENETIC AND EPIGENETIC MANIPULATION
OF ABC TRANSPORTERS AND ECTO-
PHOSPHATASES FOR THE CONFERENCE OF
DRUG RESISTANCE AND FOR THE LOSS OF
DRUG RESISTANCE IN BIOLOGICAL
SYSTEMS AND METHODS FOR THE
DETECTION OF ECTO-PHOSPHATASE
INHIBITORS

Prior Group Art Unit: 1651

Examiner: Weber, Jon P.

Atty. Dkt. No.: TEXG:003USD1

RESPONSE TO RESTRICTION REQUIREMENT DATED MARCH 31, 2004

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Commissioner:

This paper is submitted in response to the Restriction Requirement dated March 31, 2004 for which the date for response is April 30, 2004. It is believed that no fee is due; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Commissioner is authorized to deduct said fees from Fulbright & Jaworski L.L.P. Account No.: 50-1212/TEXG:003USD1.



In response to the restriction requirement which the Examiner imposed, Applicants elect, with traverse, to prosecute claims 20-21, 26, 28-31, 32 and 51, *i.e.*, the Group I claims. In response to the species election requirements, Applicants elect, without traverse, (a) plant cells, (b) *Arabidopsis thaliana* AtPGP-1, and (c) *Pisum sativum* apyrase.

Applicants respectfully traverse as all of the pending claims are generically linked by claim 20, but this has not been acknowledged on the record. 37 C.F.R. §1.141(a). Specifically, all of the pending claims as amended on April 25, 2002 include the limitations of claim 20, and all of the limitations used to delineate Groups I-XX are found only in the dependent claims based on claim 20.

In a restriction requirement, the presence of generic linking claims should be stated on the record. M.P.E.P. §814. The linked claims “must be examined with any one of the linked inventions that may be elected.” *Id.* Consistent with this, the Federal Circuit Court of Appeals has noted that an applicant may prosecute generic, linking claims “without running afoul of the restriction requirement because they are linking claims.” *In re Michael P. Doyle*, 01-1439, *10 (Fed. Cir., June 12, 2002) citing MPEP §809.03 (8th ed. 2001). Indeed, in the *Doyle* case, the Solicitor for the PTO agreed with the Court that the applicant should have prosecuted the linked claims. The Court held that the absence of such claims from the parent application was an error in the patent correctable under the reissue statute. *Id.* at *11.

As claim 20 links all of the pending claims, Applicants respectfully request that this be indicated on the record pursuant to MPEP §§ 809.02 and 814 and that all of the claims be examined.

Applicants respectfully request favorable consideration of this case in view of the above.

Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants' representative at (512) 536-3085.

Respectfully submitted,



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Date: April 29, 2004